

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TZIPORA GLICK,

Plaintiff,

v.

CMRE FINANCIAL SERVICES, INC.,

Defendant.

USDC SDNY
DOCUMENT
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DATE FILED: 2/17/2022

21 CV 07456 (NSR)
ORDER

NELSON S. ROMÁN, United States District Judge:

Plaintiff Tzipora Glick (“Plaintiff”) brings this action against CMRE Financial Services, Inc. (“Defendant”), alleging violation of the Fair Debt Collection Practices Act. (ECF No. 1.) On December 2, 2021, Defendant filed a motion to dismiss that includes an argument that Section 1692c(b) is an unconstitutional restriction on speech in violation of the First Amendment. (ECF No. 10.) On December 15, 2021, Defendant filed a notice of constitutional challenge. (ECF No. 14.)

Federal Rule of Civil Procedure 5.1 provides:

A Party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly: (1) file a notice of constitutional question stating the question and identifying the paper that raises it, if: (A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity; . . . and (2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned . . . either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

Fed. R. Civ. P. 5.1(a)(1)(A). The Court must then “certify to the appropriate attorney general that a statute has been questioned.” Fed. R. Civ. P. 5.1(b). The attorney general is then provided with 60 days after the notice is filed to intervene unless the Court sets a later time. Fed. R. Civ. P. 5.1(c). In addition, 28 U.S.C. § 2403(a) provides:

In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

28 U.S.C. § 2403(a).

Here, Defendant has filed a motion to dismiss that includes a challenge to the constitutionality of a certain provision of the Fair Debt Collection Practices Act. In accordance with 28 U.S.C. § 2403 and Federal Rule 5.1, the Court certifies the constitutional challenge and directs the Clerk of Court to provide notice to the Attorney General of the United States in accordance with Federal Rule 5.1(a)(2).¹

CONCLUSION

For the foregoing reasons, the Court certifies the following constitutional challenge as set forth in Defendant's motion to dismiss:

1. Whether Section 1692c(b) of the Fair Debt Collection Practices Act which states that "a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector" is an unconstitutional restriction on speech in violation of the First Amendment.

¹ The Court notes that Plaintiff has already provided notice to the Attorney General of the United States. In response, the United States acknowledged the challenge, and requested an extension of time to intervene. (ECF No. 16.)

The deadline for the United States to intervene is extended to March 31, 2022. The Clerk of the Court is kindly directed to provide notice to the Attorney General of the United States in accordance with Federal Rule of Civil Procedure 5.1(a)(2).

Dated: February 17, 2022
White Plains, New York

SO ORDERED:

A handwritten signature in blue ink, appearing to read "Nelson S. Román", is written over a horizontal line.

NELSON S. ROMÁN
United States District Judge